

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FREDRICK MARTINEZ,

Petitioner,

vs.

BILL GILESPIE, *et al.*,

Respondents.

2:07-cv-1038-JCM-PAL

ORDER

Petitioner has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, but he has failed to simultaneously submit either a motion for leave to proceed *in forma pauperis* or payment of the \$5.00 filing fee. Petitioner shall be sent a motion for leave to proceed *in forma pauperis* form, should he wish to apply for pauper status, and alternatively given an opportunity to pay the requisite filing fee.

Petitioner has filed a motion for the appointment of counsel in this action. (Docket #2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of

1 the case are such that denial of counsel would amount to a denial of due process, and where the
2 petitioner is a person of such limited education as to be incapable of fairly presenting his claims. *See*
3 *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The petition
4 on file in this action is well-written and sufficiently clear in presenting the issues that petitioner
5 wishes to bring. It does not appear that counsel is justified in this instance. The motion shall be
6 denied.

7 **IT IS THEREFORE ORDERED** that the Clerk shall send to petitioner a blank
8 motion for leave to proceed *in forma pauperis* form and instructions therefor. Petitioner shall have
9 **thirty (30) days** from the date of entry of this order within which to file an application to proceed *in*
10 *forma pauperis*. Failure to do so will result in the dismissal of this action. Alternatively, petitioner
11 shall have **thirty (30) days** from the date of entry of this order within which to have the full \$5.00
12 filing fee sent to the Clerk. Failure to do so may result in the dismissal of this action.

13 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of
14 counsel (Docket #2) is **DENIED**.

15 DATED this 25th day of February, 2008.

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18 UNITED STATES DISTRICT JUDGE
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